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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. GUADALUPE MINA, Defendant and Appellant.	G055798 (Super. Ct. No. 15WF1916) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheri T. Pham, Judge. Affirmed.

Erica Gambale, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler and Julie L. Garland, Assistant Attorneys General, Robin Urbanski and Kristen Kinnaird Chenelia, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Guadalupe Mina of one count of mayhem (Pen. Code, § 203; all further statutory references are to the Penal Code unless otherwise stated), and one count of aggravated assault (§ 245, subd. (a)(1)). As to the assault charge, the jury also found true an allegation defendant personally inflicted great bodily injury (§ 12022.7, subd. (a)).

The trial court imposed a four-year prison sentence for the mayhem conviction. It stayed sentencing on the assault charge and the great bodily injury enhancement pursuant to section 654. The court suspended the sentence, and placed defendant on probation.

On appeal, defendant raises three claims: (1) The mayhem conviction must be reversed because there was insufficient evidence the victim suffered a permanently disfiguring injury. (2) The trial court prejudicially erred by excluding evidence of a possible future civil lawsuit involving defendant, the victim, and her boyfriend, as well as evidence of a settlement in a separate suit brought by the victim against the bar where the incident occurred. (3) The prosecutor committed prejudicial misconduct by improperly vouching for the credibility of the victim and her boyfriend. We reject defendant's contentions, and affirm the judgment.

FACTS

Prosecution Case

One night, M.M.,[1] her boyfriend K.G., and four friends went to a bar in Huntington Beach. It being a Saturday, the bar was very crowded. K.G. and M.M. were dancing when M.M. accidentally bumped into defendant and spilled the two drinks defendant was carrying.

M.M. apologized, and defendant said to M.M., "You better buy me a new one, bitch." M.M. told defendant to "just walk away." Defendant started to walk away,

[1] California Rules of Court, rule 8.90(b), advises we should consider referring to certain individuals by their initials in order to protect their privacy. We do so in this case.

but then turned back and struck M.M. in the face with the glass in her right hand. Defendant and M.M. grabbed each other and fell to the floor. After being hit, M.M. said she blacked out for a second.

Security staff stopped the fight, and escorted M.M. out of the bar. Once outside, K.G. saw a "huge cut" on M.M.'s face, and called police. His recorded 911 call was played for the jury. M.M. also realized that she was bleeding severely. K.G. ran back into the bar, saw defendant, and tried to stop her from leaving.

K.G. described M.M.'s injury as "a huge cut [showing] her bone and she was bleeding a lot." Paramedics transported M.M. to a hospital, where she was treated. She received 36 stitches in her face.

The physician testified M.M. suffered an "extensive laceration to the face . . . near the left eye. [¶] It's a deep laceration that goes through the skin completely and the subcutaneous layer, as well as some of the muscle." He stated the wound was consistent with being struck by glass, and inconsistent with being struck with a fist. When asked what kinds of medical concerns are raised by such an injury, the doctor said one would be "cosmetic repair."

M.M. said the injury left a scar on her face and she could not move her eyebrow up and down for about a year because of peripheral nerve damage. She saw three different doctors, all of whom offered different opinions on what could be done to treat her face. As of the trial date, she had not followed through on those options. She regained function of her eyebrow muscles and nerves in about a year.

A friend of M.M. and K.G. testified he was present at the bar that night and witnessed the incident. He saw defendant hit M.M. in the face with a beer glass, describing it as "a pint glass." He stated he saw the glass "actually make contact with [M.M.]."

When asked about how M.M.'s facial injury had "changed" between the August 2015 incident and the December 2017 trial, the friend stated: "It's healed a lot

more. It's—you can still see the scar and how it kind of goes here and—you can still see the scarring. It's healed pretty well, I think, considering. But, I mean, she has a lot of makeup on over it and . . . you know, [she] cover[s] her face with her hair. But, in general, it's—I think it's healed pretty well."

Defense Case

Huntington Beach Police Detective Thomas Engle testified he was unable to take a statement from M.M. because she was in pain from her injuries and intoxicated. He interviewed defendant and observed scratch marks on her shoulder blade and left wrist/forearm area. She complained of pain to her head, but there were no injuries to her hands.

Defendant testified a friend called her that night and asked for a ride home from Huntington Beach. She went to the bar and found her friend. She ordered pineapple juice, which came in a pint glass, and her friend got a beer that was also in a glass. She did not have any alcoholic beverages that night.

As they were getting ready to leave the bar area, defendant stated she felt a "hard" bump, and dropped her juice and her friend's beer. She insisted M.M. had slammed into her, causing the drinks to spill on her, and her to drop the glasses. She tried to go to the restroom to clean up, but M.M. grabbed her and said "It wasn't me." Defendant said M.M. would not let go. She thought M.M. had trouble keeping her balance and slurred her speech.

Defendant told M.M., "Let go of me." M.M. was yelling something, but defendant could not hear her over the loud music. Defendant tried to walk away, but felt someone grab her and pull her hair down. She testified that she blindly swung her hands in a "paddling motion" to get her hair back. Next thing she knew, she was being pinned down by security. She said she felt she was being attacked, and acted to defend herself.

Security told defendant to leave through the back of the bar. She said K.G. followed her, called her names, tugged on her purse, and threatened to sue her.

Defendant said she told K.G. to leave her alone and asked security for help. They told K.G. to go back to the front of the bar.

Security then took her into the kitchen, where she stayed for 30 minutes, before being interviewed by police. Police then handcuffed her, and took her out through the front of the bar. As they did so, defendant said K.G. continued to call her names, and spat on her feet.

Defendant stated she never "punched" M.M., she never "threw anything" at her, and she never pushed her. She insisted she was only trying to defend herself. She said she did not have a glass in her hand, nor was there any blood on her clothes. She maintained the two glasses never broke. When asked to explain some inconsistencies between her testimony and what she had told Engle at the scene that night, she said the reason she told the detective that she was the one who was attacked, and did not tell him what really happened, was because she was emotional, crying, and hurt.

Two character witnesses testified for defendant. Both testified defendant does not usually drink, and is not violent; rather she is calm, peaceful, and honest. Furthermore, both said defendant is not confrontational and is not the kind of person who would become angry over a spilled drink.

Prosecution's Rebuttal Case

Engle was recalled by the prosecution. He testified he interviewed defendant that night in the bar's kitchen. She told him M.M. bumped into her and then threw her drink on her. She said M.M. grabbed her wrist, so she struck M.M. in the face "three to five times" with her hand. Defendant told Engle she was defending herself. Engle said he took defendant into custody following the conversation in the kitchen. He never saw K.G. approach defendant, insult or yell at her, or spit on her.

DISCUSSION

1. Substantial Evidence Supports a Finding of Permanent, Disfiguring Injury

Defendant's first claim is the evidence was insufficient to support a mayhem conviction because the prosecution did not establish M.M. suffered a permanently disfiguring injury. We disagree.

"In reviewing a sufficiency of evidence claim, the reviewing court's role is a limited one." (*People v. Smith* (2005) 37 Cal.4th 733, 738.) "Our role when reviewing the sufficiency of the evidence is to evaluate the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Ramos* (2016) 244 Cal.App.4th 99, 104.) We view the record in the light most favorable to the judgment, resolving all conflicts and indulging all reasonable inferences in support of the judgment. If more than one inference may reasonably be drawn from the evidence, we accept the inference supporting the judgment. (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) "'A reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support'" the jury's verdict. [Citation.]' [Citation.]" (*Ibid*.)

"Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem." (§ 203.) Here, the prosecution's theory of mayhem was that defendant disfigured her victim.

Disfigurement constitutes mayhem "only [when] the injury is permanent." (*Goodman v. Superior Court* (1978) 84 Cal.App.3d 621, 624 (*Goodman*); *People v. Hill* (1994) 23 Cal.App.4th 1566, 1571.) Nevertheless, the "possibility that a victim's disfigurement might be alleviated through reconstructive surgery is no bar to a finding of 'permanent' injury." (*People v. Williams* (1996) 46 Cal.App.4th 1767, 1774.) Thus, "'an

injury may be considered legally permanent for purposes of mayhem despite the fact that cosmetic repair may be medically feasible.' [Citations.]" (*People v. Santana* (2013) 56 Cal.4th 999, 1007 (*Santana*).) "[I]n a prosecution for mayhem, the word 'permanent' can no longer be applied in its literal sense since medical technology is increasingly capable of effective cosmetic repair of injuries that would otherwise be permanently disfiguring. . . . In this context that is the proper legal understanding of the word 'permanent.'" (*Hill, supra,* 23 Cal.App.4th at pp. 1574-1575.)

Defendant emphasizes how M.M.'s injuries were not disabling as opposed to disfiguring. Even though M.M.'s eyebrow nerves and muscles were only temporarily disabled, that was not the theory of mayhem the prosecution pursued. Similarly, defendant's focus on the fact M.M.'s injuries had healed by the time of trial is misdirected. This conflates the injury with the scar left behind after the injury has healed.

Defendant argues "here the wound to [M.M.'s] brow did not amount to a 'disfigurement' within the meaning of [section 203]," and cites *Santana,* for the proposition "'"not every visible scarring wound" may establish mayhem.'" True, but the *Santana* court did not imply that *no* "visible scarring wound" could ever constitute mayhem. Indeed, the court cited *People v. Newble* (1981) 120 Cal.App.3d 444 (*Newble*), and *Goodman,* as cases where facial scars did constitute mayhem.

In *Goodman,* the injury was a facial knife wound, resulting in "'a scar about three to three and a half inches long, right at the end of the right eyebrow, running from about two inches above the eyebrow to below the eye. As a matter of fact, it's about four or five inches long. It runs into the cheek . . . [a]nd down almost parallel to the mouth.'" (*Goodman, supra,* 84 Cal.App.3d at p. 623.) "While not every visible scarring wound can be said to constitute the felony crime of mayhem, we decline to say as a matter of law that the trier of fact could not reasonably conclude under Penal Code section 203 that mayhem was committed here." (*Id.* at p. 625.)

In *Newble,* "[t]he primary issue [was] whether the infliction of a three-inch facial laceration which extends from the bottom of the left ear to just below the chin, which is likely to leave a permanent scar, constitutes disfigurement of a member of the body within the meaning of section 203." (*Newble, supra,* 120 Cal.App.3d at p. 447.) The victim "was treated at the emergency hospital for a three-inch laceration with a maximum depth of one-half inch on the left side of her face. The injury, caused by a slash from a sharp object (the evidence indicates defendant's fingernail file), severed a small portion of one of the salivary glands. A doctor testified the wound required double layer suturing and was likely to leave a scar because of the victim's [skin coloring]." (*Id.* at p. 448.)

The *Newble* court concluded "the trier of fact could reasonably have concluded that under section 203 mayhem had been committed by defendant and we decline to disturb that factual finding and determine as a matter of law that a three-inch permanent facial scar is not disfigurement within the meaning of section 203." (*Newble, supra,* 120 Cal.App.3d at p. 453.) So too here.

M.M.'s facial scarring was still observable two years after defendant cut her face. She testified the after-effects of her injury were "[t]he scar and just how it looked." The victim's friend testified "[Y]ou can still see the scar and how it kind of goes here and—you can still see the scarring. It's healed pretty well, I think, considering. But, I mean, she has a lot of makeup on over it and . . . you know, [she] cover[s] her face with her hair." The physician stated one of the medical concerns that are raised by such an injury would be "cosmetic repair."

"[S]ection 203 pays particular attention to the face, recognizing the particular pain and emotional scarring that results from disfiguring a person's face." (*People v. Johnson* (2018) 21 Cal.App.5th 267, 281 (*Johnson*); cf. *Santana, supra*, 56 Cal.4th at p. 1004 [the modern rationale for the crime of mayhem is the preservation of the natural completeness and normal appearance of the human face and body].)

Like the defendant in *Johnson*, defendant here attempts to minimize M.M.'s scarring. But "[t]he Legislature did not provide defendant a free pass for small scars." (*Johnson, supra*, 21 Cal.App.5th at p. 282.) On the record before us, there is substantial evidence that M.M. had a scar on her face from where defendant had cut her two years before, and that she uses her makeup and hair to hide it. Even though the underlying physical injuries had healed, she retained a most telling remnant: a visible scar on the most prominent part of her body, her face. We cannot say the jury was unwarranted in finding this scarring constituted disfigurement under section 203.

2. The Trial Court Did Not Prejudicially Err by Excluding Evidence the Victim and Her Boyfriend Had Pursued Civil Remedies.

A. Background

In a pretrial motion, defense counsel asked to be permitted to cross-examine M.M. and K.G "regarding their retention of a civil lawyer." Counsel claimed in her moving papers that: "[M.M.] informed [a police officer] on August 24, 2015,[2] that she and her boyfriend, [K.G.], had retained a civil attorney. I have learned that their attorney was able to obtain a settlement with the bar . . . where [M.M.] was injured. They were also able to obtain the surveillance footage through the civil discovery process, footage that was never obtained by the [police]. This evidence is relevant to their bias as witnesses as well as their credibility, and the defense should be permitted to cross examine regarding their immediate retention of an attorney, and how they obtained the video."

The court pointed out the civil suit was against the bar, not defendant, and it had already been settled. Moreover, "you don't have any offer of proof that they are going to be suing your client. If you have evidence that these people have intention or have filed a lawsuit against your client, then that would come in. . . . [¶] But this [civil

[2] The date of the charged offenses is August 16, 2015.

litigation] is against the bar. And so that is not coming in because I don't see the connection between suing the bar or threatening to sue the bar as reflecting on [K.G.'s and M.M.'s] bias or motive to fabricate the fact that [defendant] was the aggressor." Trial counsel's justification was that it shows "they are litigious." The court rejected this argument as "pure speculation," and ruled that unless counsel had a "more concrete offer of proof," no evidence of civil litigation was going to be permitted.

After defendant testified at trial that K.G. had threatened to sue her, defense counsel asked to recall K.G. so she could elicit evidence about his retention of a civil attorney, and whether he intended to file civil proceedings against defendant. The court stated it still did not see any relevance: "[K.G.] retained a civil attorney, but you still don't have any evidence that he ever filed a lawsuit against [defendant]." Counsel insisted she should "be entitled to ask [K.G.] if he intends to sue [defendant] when this case is over." The court was not persuaded.

The court rejected counsel's request: "The Court still finds the probative value of [K.G.] hiring a civil attorney and later getting a settlement from the bar, the probative value of that is minimal, if any, and the prejudicial effect, and under [Evid. Code §] 352, I am going to exclude it. It's not only unduly prejudicial, speculative, as well as undue consumption of time. The danger of misleading and confusing the jury is substantial and will outweigh any probative value of that evidence."

We find no error.

B. Analysis

Cross-examination designed to expose a witness's motivation in testifying is an important function of the Sixth Amendment right of confrontation. (*Davis v. Alaska* (1974) 415 U.S. 308, 316-317 (*Davis*).) Nevertheless, "'[a]s a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused's right to present a defense.'" (*People v. Blacksher* (2011) 52 Cal.4th 769, 821.) Thus, a trial court has broad discretion in determining whether to admit or exclude evidence. (*People v.*

Mullens (2004) 119 Cal.App.4th 648, 658 (*Mullens*).) As a result, we review a trial court's rulings regarding the admission or exclusion of evidence on the ground of relevance for an abuse of discretion. (*People v. Cole* (2004) 33 Cal.4th 1158, 1195.)

"'[T]he term judicial discretion "implies absence of arbitrary determination, capricious disposition or whimsical thinking."' [Citation.] '[D]iscretion is abused whenever the court exceeds the bounds of reason, all of the circumstances being considered.' [Citation.]" (*Mullens*, *supra*, 119 Cal.App.4th at p. 658.) Indeed, the exclusion of impeachment evidence will only be disturbed "'on a showing [that] the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' [Citation.]" (*People v. Peoples* (2016) 62 Cal.4th 718, 745 (*Peoples*).) "Because the court's discretion to admit or exclude impeachment evidence 'is as broad as necessary to deal with the great variety of factual situations in which the issue arises' [citation], a reviewing court ordinarily will uphold the trial court's exercise of discretion [citations]." (*People v. Clark* (2011) 52 Cal.4th 856, 932 (*Clark*).)

C. Relevance

Here, the court ruled the proffered civil litigation evidence was irrelevant. It is true impeachment evidence establishing a motivation to lie can be relevant, because evidence is "relevant" if it has any tendency in reason to prove or disprove any disputed fact of consequence, including evidence relevant to the credibility of a witness. (Evid. Code, §§ 210, 780, subd. (f).) Further, "[a]s a general matter, a defendant is entitled to explore whether a witness has been offered any inducements or expects any benefits for his or her testimony, as such evidence is suggestive of bias." (*People v. Brown* (2003) 31 Cal.4th 518, 544.) But that is not the end of the inquiry.

Evidence is irrelevant if it only invites speculation. If the inference of the existence or nonexistence of a disputed fact to be drawn from proffered evidence is based on speculation, conjecture, or surmise, the proffered evidence is not relevant evidence.

(See *People v. Louie* (1984) 158 Cal.App.3d Supp. 28, 47.) The inference defendant sought to present to the jury here—the *possibility* of future litigation—was based on mere speculation.

"When a trial court denies a defendant's request to produce evidence, the defendant must make an offer of proof in order to preserve the issue for consideration on appeal." (*People v. Foss* (2007) 155 Cal.App.4th 113, 126 (*Foss*).) Furthermore, the offer of proof "must set forth the actual evidence to be produced and not merely the facts or issues to be addressed and argued. [Citation.]" (*People v. Carlin* (2007) 150 Cal.App.4th 322, 334.)

In *Foss*, the defendant filed a pretrial motion requesting that he be permitted to explore a witness's alleged morbid fear of sexual matters, in particular of child molestation. (*Foss, supra,* 155 Cal.App.4th at p. 123.) The purpose of this evidence, according to the defendant, was to show that this alleged obsession led the witness to influence the child victim to make up her claims that the defendant molested her. The trial court denied the motion. (*Ibid.*)

On appeal, the defendant claimed the denial of this motion violated his rights to cross-examine and present a defense. The court disagreed: "Here, defendant did not give a specific offer of proof of evidence to be produced. His offer was conclusory and concerned only the area of questioning. It did no more than speculate as to what might be proven . . . . This speculation and lack of specificity was inadequate to preserve the issue for consideration on appeal." (*Foss, supra,* 155 Cal.App.4th at p. 128.)

Here, defense counsel's offer of proof was similarly lacking. As such, it was insufficient to establish error in the trial court's limitation of evidence on the issue. (Cf. *People v. Dyer* (1988) 45 Cal.3d 26, 50 ["In the absence of proof of some agreement which might furnish a bias or motive to testify against defendant, the fact that each witness had been charged with the commission of unrelated offenses was irrelevant"].)

Consequently, the trial court did not abuse its discretion in excluding the evidence as irrelevant.

D. Evidence Code Section 352

Even assuming the relevance basis for exclusion was erroneous, the trial court also found that it would not permit inquiry into the civil litigation issue under Evidence Code section 352.[3]

"A trial court's decision to admit or exclude impeachment evidence under Evidence Code section 352 is reviewed for an abuse of discretion." (*People v. Johnson* (2015) 61 Cal.4th 734, 766.) Its ruling "will be upheld unless the trial court 'exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' [Citation]." (*People v. Ledesma* (2006) 39 Cal.4th 641, 705.) "A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless the court which passes upon the effect of the error or errors is of the opinion that the error or errors complained of resulted in a miscarriage of justice . . . ." (Evid. Code, § 354.) "'[A] "miscarriage of justice" should be declared only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citation.]" (*People v. Richardson* (2008) 43 Cal.4th 959, 1001 (*Richardson*); see also *People v. Bradford* (1997) 15 Cal.4th 1229, 1325 [where trial court ruling was not a refusal to allow defendant to present a defense, but merely rejected certain evidence concerning the defense, review is under *People v. Watson* (1956) 46 Cal.2d 818, 836].)

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[3] Evidence Code section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

The trial court balanced the minimal probative value of possible future civil litigation evidence against what it found was the high probability its admission would have necessitated undue consumption of time or confused the issues, or misled the jury. "It's . . . unduly prejudicial, speculative, as well as undue consumption of time. The danger of misleading and confusing the jury is substantial and will outweigh any probative value of that evidence." On this ground, therefore, the exclusion of such evidence was not plain error. (Cf. *People v. Geier* (2007) 41 Cal.4th 555, 585, overruled on other grounds in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305.)

Defendant counters that the civil litigation issues would not have been unduly time-consuming to present. We disagree.

To impeach M.M. and K.G., defendant would have had to elicit and explain the intricacies of civil litigation. The defense would have been required to establish what M.M. and K.G. had done and, as proffered by defense counsel, to delve into possibly privileged communications between them and any civil attorneys, as to when, what and how civil litigation was to proceed or had proceeded.

The People would have been entitled to call witnesses to rebut defendant's evidence so that the jury could fairly evaluate the degree to which M.M.'s and K.G.'s civil litigation against the bar motivated a reason to lie at trial. In essence, the time consumed exploring the civil issues could have exceeded the time it took to present the evidence related to the charged crimes, turning the proceedings into a civil mini-trial. Further, the risk of jury distraction and confusion would be commensurately high—the jurors would have had to concern themselves with the application of civil litigation strategies and procedures in order to evaluate the impeachment weight of such evidence, if any.

Under these circumstances, it was not an abuse of discretion for the court to find the conjectural evidence at issue "'might involve undue time, confusion, or prejudice which outweighs its probative value.'" (*Clark, supra*, 52 Cal.4th at p. 932.)

This was a not a particularly close case. The fact of M.M.'s injuries were never an issue, and defendant's defense was that she was not the perpetrator and, if she was, she was merely defending herself. Indeed, defendant does not contest her conviction for aggravated assault or the true finding on the great bodily injury enhancement.

The "latitude [Evidence Code] section 352 allows for exclusion of impeachment evidence in individual cases is broad. The statute empowers courts to prevent criminal trials from degenerating into nitpicking wars of attrition over collateral credibility issues." (*People v. Wheeler* (1992) 4 Cal.4th 284, 296.) While collateral matters may be admissible for impeachment purposes, "'the collateral character of the evidence reduces its probative value and increases the possibility that it may prejudice or confuse the jury.' [Citation.]" (*People v. Morrison* (2011) 199 Cal.App.4th 158, 164.)

Here, the potential for undue prejudice substantially outweighed any probative value, and it was not error for the court to avoid a "mini-trial" on a speculative and collateral impeachment issue of marginal value. (See *People v. Hart* (1999) 20 Cal.4th 546, 604-607 [exclusion of evidence of pending civil suit presented substantial risk of confusing or misleading the jury].)

We also reject defendant's claim the exclusion of the civil litigation evidence violated her federal constitutional rights to confront prosecution witnesses and present a complete defense. "[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. And as we [have] observed, . . . 'the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" (*Delaware v. Van Arsdall* (1986) 475 U.S.

673, 679 (*Van Arsdall*), original italics, quoting *Delaware v. Fensterer* (1985) 474 U.S. 15, 20.)

Thus, unlimited inquiry into collateral matters is not constitutionally mandated. (*People v. Jennings* (1991) 53 Cal.3d 334, 372.) In fact, "'trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross-examination.' [Citation.]" (*People v. Quartermain* (1997) 16 Cal.4th 600, 623.) Unless defendant can show the proposed cross-examination would have produced a significantly different impression of the witness's credibility, the trial court's exercise of its discretion in this regard will not be deemed to have violated defendant's confrontation rights. (*Van Arsdall, supra*, 475 U.S. at p. 680; *People v. Frye* (1998) 18 Cal.4th 894, 946, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) No Sixth Amendment violation will be found if the jury is exposed to the essential facts from which it could appropriately draw inferences relating to the reliability of the witness. (*Davis, supra*, 415 U.S. at p. 318.)

Moreover, although a defendant is entitled to elicit evidence favorable to his or her defense, a defendant is not entitled to engage in a fishing expedition based on a speculative showing that such evidence might possibly exist. (See *People v. Gallego* (1990) 52 Cal.3d 115, 197 [no abuse of discretion by failing to allow defendant to conduct fishing expedition to attempt to discover good cause when no independent basis to believe good cause exists].) """'The trial court has broad discretion in determining the relevance of evidence [citations] but lacks discretion to admit irrelevant evidence.'"" [Citation.]" (*People v. Thornton* (2007) 41 Cal.4th 391, 444.) No abuse of discretion arises where the foreclosed line of inquiry is not likely to produce evidence relevant to the issues presented. (*People v. Dyer* (1988) 45 Cal.3d 26, 48, 50; cf. *People v. Brown* (2003) 31 Cal.4th 518, 545, fn. 9 [trial court did not violate confrontation clause in precluding impeachment with evidence of marginal relevance].)

Here there was no *evidence* M.M. and K.G. were motivated to testify falsely in order to obtain benefit for any civil claim against defendant. Moreover, it appears from defense counsel's arguments at the in limine motion that a settlement had already been reached with the bar. There was no evidence M.M. or K.G. had initiated, or even planned, litigation against defendant. "A decision by a trial court to exclude evidence only violates the Constitution if the evidence is 'sufficiently reliable and crucial to the defense.' [Citation.] If the evidence does not bear 'persuasive assurances of trustworthiness,' the trial court's decision to exclude the evidence could not violate due process. [Citation.]" (*Trillo v. Biter* (9th Cir. 2014) 769 F.3d 995, 1003.)

It is not reasonably probable that a result more favorable to defendant would have been reached even had the trial court permitted defendant's speculative journey into the collateral issue of possible future civil litigation. (*Richardson, supra,* 43 Cal.4th at p. 1001.) Nor did exclusion of such evidence violate defendant's constitutional rights. The trial court did not exercise "'its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.'" (*Peoples, supra,* 62 Cal.4th at p. 745.) Instead, it acted well within its discretion in preventing defense counsel from exploring this speculative line of inquiry in front of the jury.

3. The Prosecutor Did Not Improperly Vouch for the Credibility of His Witnesses

Defendant contends the prosecutor, in violation of her rights under the federal Constitution, engaged in three instances of misconduct during his rebuttal closing argument by improperly vouching for the credibility of prosecution witnesses M.M. and K.G. "in the way he argued [M.M.'s] and [K.G.'s] lack of bias and motive for testifying."

Specifically, she argues: (1) "[T]he prosecution argued 'these are not witnesses with a bias, with a motive, with an agenda.'" (2) The prosecutor argued defendant had a stake in the outcome of this trial, "'unlike any other witness who testified. No one else who testified has an interest in the outcome or has a stake in the

case.'" (3) Finally, the prosecutor argued M.M. and K.G. "'are not witnesses who have an agenda.'"

Defendant failed to object to two of the statements she now claims were error, nor did she seek a curative admonition. Therefore, the misconduct claim is technically forfeited as to all but one. (*People v. Prieto* (2003) 30 Cal.4th 226, 259-260.) Defendant did object to the second of these statements, on the grounds it was "vouching," and the court overruled that objection. Because the other two statements are essentially the same as the one she did object to, and because defendant raises an ineffective assistance of counsel claim regarding her failure to object, we will consider her claim as to all three statements on the merits.

Normally, a "'"defendant's failure to make a timely and specific objection" on the ground asserted on appeal makes that ground not cognizable. [Citations.]'" (*People v. Partida* (2005) 37 Cal.4th 428, 434.) Thus, an appellate court's review is limited to the stated ground for the objection. (*People v. Kennedy* (2005) 36 Cal.4th 595, 612, disapproved on other grounds by *People v. Williams* (2010) 49 Cal.4th 405.) Defense counsel's trial objection to the prosecutor's second statement was for "vouching," not for "arguing facts not in evidence that he knew were false," as she now expands it on appeal. Our review is limited to the claim raised below. We find the prosecutor's remarks were not improper "vouching."

First, appellate counsel's characterization of the trial prosecutor as a liar—"disingenuous and untruthful"—is not only uncalled for, but is not supported by the evidence. As we observed above, the defense was prevented from cross-examining the People's witnesses' regarding their purported bias because there was no basis from which to show that any nonspeculative future litigation even existed. Thus, the prosecutor did not "improperly capitalize[] on a prejudicial trial court ruling," as defendant contends. Rather, because the defense failed to establish that a basis for any such bias even existed, the prosecutor was free to argue the respective credibility of the two competing accounts

of what happened that night in the bar, based on the *evidence*, including why defendant's trial testimony was inconsistent with what she had told Engle on the night of the incident.

Second, defendant's objection to the prosecutor's argument as "vouching" misconstrues the meaning of that term. "Vouching" is not simply arguing about the respective credibility of witnesses.

"As a general matter, '[i]mpermissible "vouching" may occur where the prosecutor places the prestige of the government behind a witness through personal assurances of the witness's veracity or suggests that information not presented to the jury supports the witness's testimony.' [Citation.] Similarly, evidence of a prosecutor's subjective motivations when prosecuting a case is not relevant, for '[i]t is misconduct for prosecutors to bolster their case "by invoking their personal prestige, reputation, or depth of experience, or the prestige or reputation of their office, in support of it." [Citation.] Similarly, it is misconduct "to suggest that evidence available to the government, but not before the jury, corroborates the testimony of a witness." [Citation.] The vice of such remarks is that they "may be understood by jurors to permit them to avoid independently assessing witness credibility and to rely on the government's view of the evidence." [Citation.]' [Citation.]" (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1329-1330, fn. omitted (*Seumanu*).)

In the context of closing argument, "[t]he rules are well settled: A criminal prosecutor has much latitude when making a closing argument. [His] argument may be strongly worded and vigorous so long as it fairly comments on the evidence admitted at trial or asks the jury to draw reasonable inferences and deductions from that evidence. [Citation.] "'[S]o long as a prosecutor's assurances regarding the apparent honesty or reliability of prosecution witnesses are based on the 'facts of [the] record and the inferences reasonably drawn therefrom, rather than any purported personal knowledge or belief,' her comments cannot be characterized as improper vouching."' [Citation.]" (*Seumanu, supra,* 61 Cal.4th at p. 1330.)

Here the prosecutor did not suggest he had other evidence, unpresented to the jury, to support M.M.'s and K.G.'s credibility (see *People v. Turner* (2004) 34 Cal.4th 406, 433 [prosecutor improperly vouched for the credibility of expert witness by referring to the prosecutor's personal knowledge of the witness and his prior use of the witness]), or that he personally believed them independent of the evidence. Moreover, nothing in the record suggests the prosecutor was aware of anything to suggest his witnesses had in fact initiated or intended to initiate civil litigation against defendant.

We also reject defendant's federal constitutional claims. "'"A prosecutor's conduct violates the Fourteenth Amendment to the federal Constitution when it infects the trial with such unfairness as to make the conviction a denial of due process . . . ."' [Citation] Defendant made no objections expressly or even impliedly referring to the federal Constitution and thus forfeited the issue." (*Seumanu, supra*, 61 Cal.4th at pp. 1331-1332.)

Even if trial counsel had raised a constitutional claim below, it would still lack merit. "A prosecutor's conduct violates the Fourteenth Amendment to the federal Constitution when it infects the trial with such unfairness as to make the conviction a denial of due process . . . . Furthermore, and particularly pertinent here, when the claim focuses upon comments made by the prosecutor before the jury, the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion." (*People v. Morales* (2001) 25 Cal.4th 34, 44 (*Morales*).) Defendant acknowledges this standard, and offers a conclusory insistence that they did, but she provides no real argument for how and why.

"Moreover, we presume that the jury relied on the instructions, not the arguments, in convicting defendant. '[I]t should be noted that the jury, of course, could totally disregard *all* the arguments of counsel.' [Citation.] Though we have focused on the prosecutor's closing arguments, we do not do so at the expense of our presumption that 'the jury treated the court's instructions as statements of law, and the prosecutor's

comments as words spoken by an advocate in an attempt to persuade.' [Citation.] The trial court emphasized this rule when, as stated, it instructed the jury to follow its instructions and to exalt them over the parties' arguments and statements." (*Morales, supra*, 25 Cal.4th at p. 47.)

That is what happened here. The trial court instructed the jury that attorneys' comments are not evidence, both before trial began, before closing argument began, and again at the end of the trial. The court also instructed the jury before closing argument began that if anything the attorneys say "conflicts with the law, you are to rely on the laws that I will be reading to you and giving you at the end of closing arguments." After argument, the jury was told "[y]ou must follow the law as I explain it to you, even if you disagree with it. If you believe that the attorneys' comments on the law conflict with my instructions, you must follow my instructions."

We find no "reasonable likelihood that the jury construed or applied" the prosecutor's remarks "in an objectionable fashion." (*Morales, supra*, 25 Cal.4th at p. 44.) Defendant's improper vouching claim must fail. In the context of the entire closing arguments of both counsel, and the instructions given to the jury, we see no reasonable likelihood the jury construed the prosecutor's remarks improperly. Accordingly, defendant's prosecutorial conduct contention fails.

DISPOSITION

The judgment is affirmed.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.